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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 566.

LEONIDAS C. EDWARDS, PLAINTIFF IN ERROR,

vs.

ARCHIBALD KEARZY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED OCTOBER 16, 1876.

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1 *Caption.*

NORTH CAROLINA, *ss:*

Pleas in the supreme court of North Carolina, held at the court-room in the capitol, in the city of Raleigh, in the State of North Carolina aforesaid, before the honorable Richmond M. Pearson, chief justice, presiding, and the honorables Edwin G. Reade, William B. Rodman, Thomas Settle, and W. P. Bynum, associate justices of said supreme court, on Monday, the 5th day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and seventy-six, convened on the first Monday in June in said year, being the 5th day of said month.

W'M H. BAGLEY, *Clerk.*

Title of cause.—Filing of transcript.

LEONIDAS C. EDWARDS, PLAINTIFF,
against
ARCHIBALD KEARZEY, DEFENDANT.

Be it remembered that, on the 26th day of June, in the year of our Lord one thousand eight hundred and seventy-six, Leonidas C. Edwards, plaintiff, by Jos. B. Batchelor and Ed. Graham Haywood, his attorneys, filed in the office of the clerk of the supreme court of North Carolina
2 a transcript of a record and judgment in a certain action from the superior court of Granville County, in said State, in which said action the said Leonidas C. Edwards was plaintiff and the said Archibald Kearzey was defendant, together with an appeal by the said plaintiff from the judgment of the said superior court of Granville County, rendered in said action, and at the same time and place filed a bond to prosecute his said appeal with effect; which said transcript, appeal, and bond are in the words and figures following, to wit:

Transcript from superior court Granville County.—Caption.

STATE OF NORTH CAROLINA,
Granville County:

Pleas in the superior court begun and held at the court-house in Oxford, on the 10th Monday after 2nd Monday in February, A. D. 1876, being the 24th day of April in said year, before the Hon. James L. Henry, judge of the 11th judicial district of said State, holding said court under a partial exchange with the Hon. Samuel W. Watts, judge of the 6th judical district, by consent, approval, and certificate of his excellency Curtis H. Brogden, governor of the State of North Carolina, in
3 accordance with the constitution and statute in such case made and provided, which said consent, approval, and certificate are in the words and figures following, to wit:

Appointment by governor.

EXECUTIVE DEPARTMENT, *Raleigh*, 1876.

To the Hon. James L. Henry, judge of the 11th judicial district, greeting:

By virtue of authority vested in me as governor of the State of North Carolina, by section 11th, article 4th of the constitution of North Caro-

lina, I hereby consent to a partial exchange of circuits between J. S. Henry and the Hon. Sam'l W. Watts, judge of the 6th judicial district, by which exchange and consent his honor Judge Henry is authorized to hold the spring term, 1876, of the superior courts of the counties of Wake, Granville, Halifax, and North Hampton.

In witness whereof I have hereunto set my hand and cause the great seal of the State to be affixed the day and date above written.

C. H. BROGDEN,
Governor.

By governor:
J. B. NEATHERY,
Private Secretary.

B. H. COZART,
Clerk Superior Court, Granville County.

Suing out of writ & filing pros. bond.

Be it remembered that heretofore, to wit, on the 1st day of March, 1869, Leonidas C. Edwards, by his attorneys, W. A. Graham and Jos. B. Batchelor, sued and prosecuted out of the office of the clerk of the superior court of Granville County a writ of summons against Archibald Kearzey and D'r Henry C. Herndon, and at the same time and place filed a prosecution bond in said cause; which said writ and bond are in the words and figures following, to wit:

Summons.

State of North Carolina to the sheriff of Granville County, greeting:

You are hereby commanded to summon Archibald Kearzey and Henry C. Herndon, if to be found in your county, to be and appear before the honorable judge of our superior court, to be held for the county of Granville, at the court-house in Oxford, on the 2nd Monday in August next, then and there to answer the complaint of Leonidas C. Edwards for withholding from him the possession of a tract of land situate in the county of Granville, State of North Carolina, on the waters of Hatcher's Run, adjoining the lands of William Tyler, senior, Morrison Stewart, the heirs at law of William Jones, deceased, John W. York, Jordan Mallory, Anson Critcher, & others, containing one hundred and seventy three acres.

Herein fail not, and have you then and there this writ.

Witness Calvin Betts, clerk of our said court, at office.

Issued 31st day of March, 1869.

C. BETTS, *C. S. C.*

Pros. bond.

We and each of us promise to pay to the defendants named in the within writ the sum of two hundred dollars: to be void, nevertheless, upon the condition that we pay to the said defendants all costs and damages which may be adjudged to them by reason of failure to prosecute the within suit successfully.

Given under our hands and seals this 31st day of March, 1869.

L. C. EDWARDS. [SEAL.]
J. C. COOPER. [SEAL.]

Proceedings at August term, 1869.

And on the return-day of said writ, to wit, on the 2nd Monday in August, A. D. 1869, being the 9th day of said month, at the August term of the superior court of Granville County, begun and held at the court-house in the town of Oxford, in the county aforesaid, before
6 the honorable Sam'l W. Watts, judge, the said summons was returned endorsed in the words and figures following, to wit:

Sheriff's return.

Comes James I. Moore, sheriff, by John G. Jones, deputy sheriff, and returns that he, sheriff of said county, had executed the said writ by delivering a copy thereof to Archibald Kearzey and Henry C. Herndon, personally, and by leaving the same with them on the 10th day of May, 1869.

Appearance of plaintiff.

And thereupon comes the said Leonidas C. Edwards, plaintiff, as aforesaid, and files his complaint in the words and figures following, to wit:

Complaint.

Superior court, August term, 1869.

NORTH CAROLINA,
Granville County:

LEONIDAS C. EDWARDS, PLAINTIFF,
vs.
ARCHIBALD KEARZEY AND HENRY C. HERNDON, defendants.

The plaintiff complains:

1. That he is the owner in fee simple of a tract of land situate in
7 Granville County, North Carolina, containing one hundred and seventy-three acres, on the waters of Hatche's Run, adjoining the lands of William Tyler, senior, Morrison Stewart, the heirs at law of the late William Jones, John W. York, Jordan Mallory, Anson Critcher, and others.

2. That the defendants withheld the possession of said tract of land from the plaintiff. Whereupon the plaintiff demands judgment—

1st. For the possession of said tract of land. 2nd. For five hundred dollars damages for withholding the same.

STATE OF NORTH CAROLINA,
Granville County:

Leonidas C. Edwards, the plaintiff in the above-entitled suit, maketh oath that the facts set forth and stated in the above complaint are true, except such as he has upon information, and those he believes to be true.

LEONIDAS C. EDWARDS.

Sworn to & subscribed before me this the day of August, 1869.
C. BETTS,
Clerk Sup'r Court.

Appearance of defendants.

And thereupon comes the said Archibald Kearzey and Henry
8 C. Herndon, defendants as aforesaid, and file their answer in the words and figures following, to wit:

Answer.

SUPERIOR COURT,
Granville County:

LEONIDAS C. EDWARDS, PLAINTIFF,
vs.
ARCHIBALD KEARZEY AND HENRY C. HERNDON, defendants. } Defendants' answer.

The defendants severally answer to the complaint:

1. That they deny that the plaintiff is the owner in fee-simple of the land mentioned and described in the complaint or is entitled to the possession thereof.

Therefore he demands judgment that he go without day and for costs against the plaintiff and his sureties.

T. L. HARGROVE,
M. V. LANIER,
Att'ys.

Archibald Kearzey and Henry C. Herndon, the above defendants, make oath that the above answer is true to the best of their knowledge and belief.

18th August, 1869.

his
ARCHIBALD + KEARZEY.
mark.

9 Sworn & subscribed before me 19th August, 1869.
C. BETTS, *Clerk.*

Disclaimer by the defendant Herndon.

And afterwards, during the same term, the defendant Henry C. Herndon, in his own proper person, comes into court, and in open court saith that he never had or claimed, or pretended to have, nor has he now, nor does he claim or pretend to have, any right, title, or interest of, in, or to the said premises and tract of land, or any part thereof; and the said defendant now and here disclaims all right and title of, in, or to the same and every part thereof; and his said disclaimer is now and here entered of record.

Award of venire.

Therefore, to try the issues joined between the parties, let a jury thereupon come here on the 2nd Monday of February, A. D. 1870, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the county between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves
10 to that jury; and the same day is given to the parties aforesaid.

Proceedings at February term, 1770.

At which day, to wit, on the 2nd Monday of February, A. D. 1870, being the 14th day of said month, at the February term of the superior court of Granville County, begun and held for said county at the court-house in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore, to try the issues joined between the parties, let another jury thereupon come here on the 2nd Monday of August, A. D. 1870, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the county between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

11 *Proceedings at August term*, 1870.

At which day, to wit, on the 2nd Monday of August, A. D. 1870, being the 15th day of said month, at the August term of the superior court of Granville County, begun and held for said county at the court-house in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore, to try the issues between the parties, let another jury thereupon come here on the 2nd Monday of February, A. D. 1871, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

Proceedings at Feb'y term, 1871.

12 At which day, to wit, on the 2nd Monday of February, A. D. 1871, being the 13th day of said month, at the February term of the superior court of Granville County, begun and held for said county at the court-house in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he m manded, therefore, to try the issues joined between the parties,

let another jury thereupon come here, on the 2nd Monday of August, 1871, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the county between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

Proceedings at August term, 1871.

13 At which day, to wit, on the 2nd Monday of August, A. D. 1871, being the 14th day of said month, at the August term of the superior court of Granville County, begun and held for said county at the court-house in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore to try the issues joined between the parties let another jury thereupon come here, on the 10th Monday after the 2nd Monday of February, A. D. 1872, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in any wise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

Proceedings at spring term.

14 At which day, to wit, on the 10th Monday after the 2nd Monday of February, A. D. 1872, being the 22nd day of April in said year, at the spring term of the superior court of Granville County, begun and held for said county at the court-house, in the town of Oxford, in the county aforesaid, before the Hon. William A. Moore, judge of 2nd judicial district, holding said court by exchange with Hon. Sam'l W. Watts, judge, under sanction and consent of his excelleney Tod R. Caldwell, governor, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore to try the issues joined between the parties let another jury thereupon come here, on the 10th Monday after the 2nd Monday of August, A. D. 1872, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in any wise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforeraid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

15 *Proceedings at fall term*, 1872.

At which day, to wit, on the 10th Monday after the 2nd Monday of August, A. D. 1872, being the 21st day of said month, in said year, at the fall term of the superior court of Granville County, begun and held for said county at the court-house, in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sherriff hath not returned the writ as heretofore he was commanded, therefore to try the issues joined between the parties let another jury thereupon come here, on the 10th Monday after the 2nd Monday of February, A. D. 1873, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in any wise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the controversy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

16 *Proceedings at spring term*, 1873.

At which day, to wit, on the 10th Monday after the 2nd Monday of February, A. D. 1873, being the 21st day of April in said year, at the spring term of the superior court of Granville County, begun and held for said county at the court house, in the town of Oxford, in the county aforesaid, before the Hon. J. W. Albertson, judge of the 1st judicial district, presiding, holding said court by exchange with Hon. Sam'l W. Watts, judge, under sanction andconsent of his excelleney Tod R. Caldwell, governor, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore to try the issues joined between the parties let another jury thereupon come here, on the 10th Monday after the 2nd Monday of August, A. D. 1873, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in any wise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the contro-
17 versy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

Proceedings at fall term, 1873.

At which day, to wit, on the 10th Monday after the 2nd Monday of August, A. D. 1873, being the 20th day of October in said year, at the fall term of the superior court of Granville County, begun and held for said county, at the court-house, in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore to try the issues joined between the parties let another jury thereupon come here, on the 10th Monday after the 2nd Monday of February, A. D. 1874, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in any wise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the contro-
18 versy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

Proceedings at spring term, 1874.

At which day, to wit, on the 10th Monday after the 2nd Monday of February, A. D. 1874, being the 20th day of April in said year, at the spring term of the superior court of Granville County, begun and held for said county at the court-house, in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid, by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore to try the issues joined between the parties let another jury thereupon come here, on the 10th Monday after the 2nd Monday of August, A. D. 1874, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in any wise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the said Edwards as the said Kearzey, between whom the contro-
19 versy is, have submitted themselves to that jury; and the same day is given to the parties aforesaid.

Proceedings at fall term, 1874.

At which day, to wit, on the 10th Monday after the 2nd Monday of August, A. D. 1874, being the 19th day of October, in said year, at the fall term of the superior court of Granville County, begun and held for said county, at the court-house in the town of Oxford, in the county aforesaid, before the Hon. James L. Henry, judge of the 11th judicial district, presiding, holding said court by exchange with Hon. Sam'l W. Watts, judge, under sanction and consent of his excellency Curtis H. Brogden, governor, come the parties aforesaid by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore, to try the issues joined between the parties, let another jury thereupon come here on the 10th Monday after the 2nd Monday of February, A. D. 1875, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make

a jury of the country between the parties aforesaid, because as
20 well the said Edwards as the said Kearzey, between whom the said controversy is, have submitted themselves to that jury, and the same day is given to the parties aforesaid.

Proceedings at spring term, 1875.

At which day, to wit, on the 10th Monday after the 2nd Monday of February, A. D. 1875, being the 19th day of April in said year, at the spring term of the superior court of Granville County, begun and held for said county at the court-house in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore, to try the issues joined between the parties, let another jury thereupon come here on the 10th Monday after the 2nd Monday of August, A. D. 1875, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make
a jury of the country between the parties aforesaid, because as
21 well the said Edwards as the said Kearzey, between whom the controvesy is, have submitted themselves to that jury, and the same day is given to the parties aforesaid.

Proceedings at fall term, 1875.

At which day, to wit, on the 10th Monday after the 2nd Monday of August, A. D. 1875, being the 18th day of October, in said year, at the fall term of the superior court of Granville County, begun and held for said county at the court-house in the town of Oxford, in the county aforesaid, before the Hon. Sam'l W. Watts, judge of the 6th judicial district, presiding, come the parties aforesaid by their attorneys aforesaid.

Award of another venire.

But because the sheriff hath not returned the writ as heretofore he was commanded, therefore, to try the issues joined between the parties, let another jury thereupon come here on the 10th Monday after the 2nd Monday of February, A. D. 1876, of twelve free and lawful men of the body of this county, by whom, &c., and who are neither in anywise akin to the said Edwards or the said Kearzey, to recognize and make a jury of the country between the parties aforesaid, because as well the
said Edwards as the said Kearzey, between whom the contro-
22 versy is, have submitted themselves to that jury, and the same day is given to the parties aforesaid.

Proceedings at spring term, 1876.

At which day, to wit, on the 10th Monday after the 2nd Monday of February, A. D. 1876, being the 24th day of April in said year, at the spring term of the superior court of Granville County, begun and held for said county, at the court-house in the town of Oxford, in the county

aforesaid, before the Hon. James L. Henry, judge of the 11th judicial district, presiding, holding said court, by exchange with Hon. Sam'l W. Watts, judge, under sanction and consent of his excellency Curtis H. Brogden, governor, as mentioned and described on page 3 in this transcript, come the parties aforesaid, by their attorneys aforesaid.

Submission to the court upon case agreed.

And agree to submit, and do hereby submit, the controversy between them to the decision and adjudication of this court, upon the following state of facts agreed, to wit:

Case agreed.

Superior court, spring term, 1876.

NORTH CAROLINA,
Granville County:

L. C. EDWARDS, PLAINTIFF,
vs.
23 ARCHIBALD KEARZEY, DEFENDANT.

This cause coming on now to be tried at the present term of the court in the presence of counsel on both sides, it is, by agreement of said counsel, submitted to the judgment of this court upon the following statement of facts, agreed between the parties, to wit:

1. On the 15th day of December, 1868, a judgment was recovered before a justice of the peace for the said county of Granville, by B. L. & D. A. Hunt, assignees, &c., against the said Archibald Kearzey, for the sum of $29.70, with interest from the 23rd day of March, 1866, due by bond, bearing date September 25th, 1865, and payable six months after date; also, for costs: which said judgment was docketed in the superior court for said county of Granville, on the 16th day of December, 1868.

2. That on the 7th day of January, 1868, Avory Taborn recovered a judgment, before a justice of the peace of said county, against said Archibald Kearzey for $165.00 damages, and the further sum of $8.87 costs; which judgment was docketed in said superior court on the 18th day of January, 1869.

24 3. That on the 10th day of October, 1868, William A. Philpott, adm'r, recovered a judgment, before a justice of the peace of said county, against the said Archibald Kearzey, for the sum of $23.71, and interest from the 27th day of August, 1866, due by bond, bearing date February 27th, 1866, and payable six months after date: also for costs: which judgment was docketed in the superior court on the 16th day of December, 1868.

4. That on the 16th day of December, 1868, a writ of fieri facias was issued, from said superior court, to sheriff of Granville County aforesaid, upon the said judgment, in favor of B. L. & D. A. Hunt, assignees, &c.: and on the same day, to wit, on 16th day of December, 1868, the same was levied, by the said sheriff, upon the tract of land in the complaint mentioned, as the property of said Archibald Kearzey.

5. That on the 18th day of January, 1869, a writ of fieri facias was issued, from said superior court, to the said sheriff, on the said judgment, in favor of Avory Taborn: and on the 19th day of January, 1869,

the same was levied, by said sheriff, on said tract of land as the property of said Archibald Kearzey.

25 6. That on the 16th day of December, 1868, a writ of fieri facias was issued, from said superior court, to the said sheriff, upon the said judgment, in favor of W. A. Philpott, adm'r, and, on the said 16th of December, 1868, the same was, by said sheriff, levied on the said tract of land, as the property of said Kearzey.

7. That all said levies were returned without sale, and writs of venditioni exponas were afterwards issued from said superior court to said sheriff upon said levies respectively, as follows, to wit: A writ of venditioni exponas in favor of the said R. L. & D. A. Hunt, assignees, on the 5th day of March, 1869; a writ of venditioni exponas in favor of said Amy Taborn on the day of ; and a writ of venditioni exponas in favor of said William A Philpott, adm'r, on the 5th day of March, 1869.

8. And that on the 6th day of March, 1869, the said sheriff, having the said writs of venditioni exponas in his hands, exposed the said tract of land to sale, as the property of said Kearzey, to the highest bidder, at public auction, at the court-house door in said county, to satisfy said writs of venditioni exponas, having previously made public

26 advertisement of said sale for the space of thirty days, when the said L. C. Edwards became the last and best bidder for and purchaser of said land, at the price of $150.00; which he paid to said sheriff, who thereupon executed to him a deed of conveyance in fee for said tract of land, bearing date the 6th day of March, 1869, aforesaid, which deed was duly acknowledged before and certified by the judge of probate of said county, and registered, with the certificate of said judge of probate, in the register's office of said county, on the 30th day of March, 1869.

9. That the whole of said tract of land was levied on and sold by said sheriff, aforesaid, absolutely, without causing any homestead therein to be laid off and allotted to said Kearzey, and without reservation or exception of any homestead or right of homestead in the same; at the times of said levies and sale the said tract of land did not, nor has it at any time since, nor does it now, exceed the value of $1,000.00. That before and at the time of the rendition of the said judgments the said Kearzey was, and ever since has been, and still is, a citizen of the State of North Carolina, and a resident of the county of Granville, on said tract

27 of land and in possession thereof, and having minor children; and he had not then, and never since has had, any title to or interest in any other real estate than the said tract of land.

10. That on the 22nd day of January, 1869, under and in pursuance of chapter 43 of the laws of the special session of 1868 of the general assembly of North Carolina, entitled "An act to provide for laying off the homestead and setting apart the personal property exempted in favor of residents of this State by article X of the State constitution," ratified the 22nd day of August, 1868, the said Archibald Kearzey applied to a justice of the peace of said county for the benefit of the homestead exemptions, as guaranteed by said article X of the constitution of this State; and said justice thereupon appointed three disinterested freeholders of said county, not connected with him, the said Kearzey; who, in accordance with said act of the general assembly, on notice, by order of said justice, met at the said residence of said Kearzey on the 22nd day of January, 1869, aforesaid, and, after taking an oath, as prescribed in said act, laid off and allotted to said Kearzey, as a homestead, not

28 exceeding one thousand dollars in value, the whole of said tract

of land by metes and bounds, and made a descriptive account of the same, under their hands and seals, and returned it to the office of register of deeds of said county for registration, as in said act he is directed; but that said register, though it came to his hands, failed to register the same.

11. Therefore, the defendant insists that at the time of said levies and sale he was, and still is, entitled to a homestead in said tract of land, under and by virtue of said article X of the present constitution of North Carolina, as against said judgments and execution's; and that said sheriff, having levied on and sold the said tract of land as aforesaid, absolutely, without causing any homestead therein to be laid off and allotted to said defendant, and without any reservation or exception of any homestead or right of homestead in the same, the said sale was void, and said sheriff's deed to the plaintiff passed no title; and that, notwithstanding said sale and conveyance, the said defendant is entitled to a homestead in said tract of land, and the plaintiff is not entitled to recover in this action.

29 12. On the other hand, the plaintiff insists that said judgments, being for debts contracted by said defendant before the present constitution of North Carolina went into effect, article X aforesaid of the said constitution does not apply to them, or if intended to be so applied would be void, as impairing the obligation of contracts, contrary to section X, article I, of the Constitution of the United States; and that the plaintiff acquired a good title to said tract of land by virtue of said sheriff's sale and deed, and is entitled to recover in this action.

M. V. LANIER,
Of Counsel for Def'd't.
HAYWOOD AND BATCHELER,
Counsel for Pl'ff.

Argument, and decision of the court.

And thereupon this case is argued upon the pleadings and case agreed, and the court, upon consideration thereof, being of opinion with the defendant, that so much of article X of the constitution of North Carolina as exempts from sale, under execution or other final process obtained on any debt, land of the debtor of the value of one thousand dollars, and the State statutes enacted in pursuance thereof, embrace within their operation even executions for debt which were con-
30 tracted before the adoption of said constitution, and that said article X and said statutes, when so interpreted and enforced, are not repugnant to article I, section X, clause 1 of the Constitution of the United States, which ordains that no State shall pass any law impairing the obligation of contracts—

Judgment.

Doth consider and adjudge that the plaintiff is not entitled to recover, and that he take nothing by his said action; but that the defendant go thereof without day. And the court doth further consider and adjudge that the defendant recover of the plaintiff and Augustin Landis, his surety, for the prosecution of said action, defendant's costs of suit, amounting, as taxed by the clerk, to the sum of dollars.

Exceptions and appeal to Supreme Court.

To which decisions of his honor, that said article X of the constitution of North Carolina, and the statutes enacted in pursuance thereof, embrace within their operations executions for debts contracted before said constitution was adopted; and that said article of the constitution and statutes, so interpreted and enforced, are not repugnant to said article I, section X, clause 1 of the Constitution of the United
31 States; and to the judgment of the court rendered in pursuance of said decisions, the said plaintiff now and here excepts, and prays an appeal to the Supreme Court, which is allowed upon plaintiff's giving undertaking according to law. Further notice of appeal is waived by defendant's counsel.

Assignment of errors.

And upon the said appeal the said plaintiff assigns the following for error:

1. There is error in this, that the said court, by construction, extended so much of article X of the constitution of North Carolina as exempts from sale under execution obtained on any debt land of the value of one thousand dollars, and the State statutes, enacted in pursuance thereof, to embrace this case, where the debts upon which the executions were obtained were contracted before the enactment of the said statutes.

2. There is error in this, that the said court held that said article X of the constitution of North Carolina and said State statutes with such construction attributed to them, in their application to the plaintiff's case, were not repugnant to article I, section X, clause 1, of the Constitution of the United States, which ordains that no State shall pass pass any law impairing the obligation of contracts.

32 3. And there is error in this, that the judgment aforesaid was rendered in favor of the defendant and against the plaintiff, whereas, by the law of the land, the said judgment ought to have been given for the plaintiff, and against the defendant.

BATCHELOR & HAYWOOD,
Atty's for Pl'ff.

Filing of undertaking on appeal.

And now and here, in open court, the plaintiff files his undertaking on appeal, which is approved by the court, in the words and figures following, to wit:

Undertaking on appeal.

GRANVILLE COUNTY:

In the superior court.

L. C. EDWARDS, PLAINTIFF,
against
ARCHIBALD KEARZEY, DEFENDANT.

This 24th day of April, 1876.

Whereas, on the 24th day of April, 1876, the above-named defendant recovered judgment against the plaintiff in the superior court of said county for his costs in said action;

And whereas the appellant intends to appeal from the said judgment to the supreme court:

Now, therefore, we, L. C. Edwards and James Cooper, of the
33 county of Granville, and State of North Carolina, undertake, pursuant to the statute, that the said appellant shall pay all costs and damages that may be awarded against him on such appeal, not exceeding five hundred dollars.

And do also undertake, pursuant to the statute, that if said judgment, or any part thereof, be affirmed, or the appeal be dismissed, the said appellant shall pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which may be awarded against the appellant on such appeal.

L. C. EDWARDS.
J. C. COOPER.

Certificate of clerk of superior court.

NORTH CAROLINA,
Granville County:

I, Benjamin H. Cozart, clerk of the superior court of the county and State aforesaid, do hereby certify the above and foregoing to be a full, true, and perfect transcript of the record of the proceedings in an action beween Leonidas C. Edwards, plaintiff, and Archibald Kearzey, defendant, lately depending in said superior court of Granville County, from the original records now remaining on file in this office.

34 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the town of Oxford, this 22nd day of June; A. D. 1876.

[SEAL.] B. H. COZART,
Clerk Superior Court.

Proceedings at June term, A. D. 1876, of the supreme court of N. C.

STATE OF NORTH CAROLINA, *ss:*

And be it remembered that at a term of the supreme court of North Carolina, begun and held for the State of North Carolina at the court-room in the capital, in the city of Raleigh, in the State of North Carolina aforesaid, before the honorable Richmond M. Pearson, chief justice, presiding, and the honorable Edwin G. Reade, William B. Rodman, Thomas Settle, and W. P. Bynum associate justices of said supreme court, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-six, being the fifth day of June, come the said Leonidas C. Edwards, by his attorneys, Jo's B. Batchelor and Ed Graham Haywood, and the said Archibald Kearzey, by his attorney, M. V. Lanier, and the following proceedings are had and entered in the cause of

35 LEONIDAS C. EDWARDS, APPELLANT,
against
ARCHIBALD KEARZEY, APPELLEE.

Argument of appeal.

This cause coming on to be argued upon the transcript of the record from the superior court of Granville County, is accordingly argued by Batchelor and Haywood for the plaintiff and appellant, and Lanier for the defendant and appellee, and is heard by the court.

Filing of opinion.

Whereupon the court, by M'r Justice Reade, delivered their opinion, in the words and figures following, to wit:

Opinion.

EDWARDS
vs.
KEARZEY.

Hill vs. Kessler (63 N. C. R., p. 437) governs this case, and sustains his honor's ruling. Gunn vs. Barry, decided in the Supreme Court of the U. States, relates to the exemption laws of Georgia, where the disparity between former and present exemptions is "striking," and affords self-evidence of conflict with the Constitution of the U. States, which forbids laws which impair the obligation of contracts; whereas there is no belligeraney between our former and present exemptions,
34 but they are in peaceful conformity. (Garrett vs. Cheshire, 69 N. C. R., 436.)

There is no error.

Judgment affirmed.

READE, *J.*

And thereupon the judgment of the court is given herein on the 8th day of August, 1876, during said term, in the words and figures following, to wit:

Judgment of supreme court at June term, A. D. 1876, affirming decision of superior court.

LEONIDAS C. EDWARDS, APPELLANT,
against
ARCHIBALD KEARZEY, APPELLEE.

This cause coming on to be heard and argued upon the transcript of the record from the superior court of Granville County, and being argued by counsel and heard by the court, and all and singular the premises being seen and by the said justices here fully understood, and mature deliberation being thereupon had, it appears to the court here that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid: Therefore it is considered and adjudged by the court here that the order and judgment aforesaid, in form aforesaid, given by the superior court of Granville County, be in all things affirmed and stand in full force and effect, the said
37 causes and matters above for error assigned in anywise notwithstanding.

And it is further considered and adjudged that the opinion of this court, as delivered by the honorable Edwin G. Reade, justice, be certified to the said superior court of Granville County.

And it is further considered and adjudged that the said Archibald Kearzey do recover against the said Leonidas C. Edwards and J. C. Cooper, his surety for his appeal herein, the costs of said appeal in this court incurred, to wit, the sum of twenty-three ($23 00) dollars; and let execution issue therefor.

Filing of supersedeas bond.

And on this day, to wit, the 8th day of August, A. D. 1876, comes the said Leonidas C. Edwards, by his said attorneys, and files in the office of the clerk of the supreme court of North Carolina his appeal and supersedeas bond in said cause, which said bond is in the words and figures following, to wit:

Supersedeas bond.

STATE OF NORTH CAROLINA, *ss:*

LEONIDAS C. EDWARDS, PLAINTIFF,
against
ARCHIBALD KEARZEY, DEFENDANT.

38 Know all men by these presents that we, Leonidas C. Edwards and James C. Cooper and John A. Williams, are held and firmly bound unto Archibald Kearzey in the sum of one thousand dollars, to the payment whereof well and truly to be made we do hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, this the 8th day of August, A. D. 1876.

The condition of the above obligation is such that, whereas the above-bounden Leonidas C. Edwards hath prosecuted a writ of error to the Supreme Court of the United States to review the judgment rendered in the above-entitled action by the supreme court of the State of North Carolina: Now, if the above named Leonidas C. Edwards shall prosecute his said suit with effect, and answer all damages and costs if he shall fail to make good his said plea, then this obligation to be void; otherwise, the same shall remain in full force and virtue.

L. C. EDWARDS. [SEAL.]
J. C. COOPER. [SEAL.]
JOHN A. WILLIAMS. [SEAL.]

Approved. The clerk will issue transcript.

R. M. PEARSON,
Chief Justice of the Supreme Court of the State of North Carolina.

39 *Certificate by clerk supreme court of N. C.*

NORTH CAROLINA, *ss:*

I, W'm H. Bagley, clerk of the supreme court of North Carolina, do hereby certify the above and foregoing to be a full, true, and perfect transcript, from the record, of all the proceedings which have been had in the cause in said court wherein Leonidas C. Edwards is plaintiff and appellant and Archibald Kearzey is defendant and appellee, as appears from the records of said court remaining in my custody; and that the petition for the writ of error filed herein by the said plaintiff and appellant, and the writ of error and citation issued herein by the plaintiff in error, are herewith appended to this transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Raleigh, in said State of North Carolina, this 19th day of August, A. D. 1876.

[SEAL.] W'M H. BAGLEY, *Clerk.*

40 *Petition for writ of error.*

NORTH CAROLINA, *ss:*

LEONIDAS C. EDWARDS, PLAINTIFF,
against
ARCHIBALD KEARZY, DEFENDANT.

To the Hon. Richmond M. Pearson, chief justice of the supreme court of North Carolina:

The petition of Leonidas C. Edwards respectfully sheweth, that at June term, A. D. 1876, of the said court, held on the first Monday of June, A. D. 1876, a judgment was rendered against your petitioner in a certain matter then and there pending before said court, wherein your said petitioner was plaintiff and one Archibald Kearzy was defendant. That in such action was drawn in question the validity of a statute and of certain portions of the constitution of the State of North Carolina, on the ground of their being repugnant to the Constitution of the United States, and the decision made by such judgment was against your petitioner, and in favor of the validity of such statute and portions of the constitution of the State of North Carolina. That such decision and judgment are final. All of which appears of record in the said
41 supreme court of North Carolina.

Your petitioner therefore desires to prosecute a writ of error in the Supreme Court of the United States, to review said decision and judgment in that tribunal; and to that end prays your honor to allow him the same, and such other process as may be required in that behalf.

And your petitioner will ever pray, &c.

LEONIDAS C. EDWARDS,
By his att'ys, BATCHELOR AND HAYWOOD.

August 9th, A. D. 1876. Allowed.

R. M. PEARSON,
Chief Justice of the Supreme Court of the State of North Carolina.

(Indorsed:) Leonidas C. Edwards vs. Archibald Kearzy. Petition for writ of error. August 9th, A. D. 1876. Haywood & Batchelor, plaintiff's attorneys.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of State of North Carolina, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of the said State in which a decision could be had in the said suit between Leonidas C. Edwards, plaintiff, and Archibald Kearzy, defendant, wherein was drawn in question the validity of a statute and of certain portions of the constitution of the said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Leonidas C. Edwards, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do com-

mand you, if judgment be therein given, that then, under your
43 seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 9th day of August, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] N. J. RIDDICK,
Clerk U. S. Circuit Court, Eastern District of North Carolina.

(Indorsed:) Leonidas C. Edwards, plaintiff in error, vs. Archibald Kearzy, defendant in error. Writ of error. Filed Aug. 12th, 1876. Wm. H. Bagley, cl'k.

44 *Citation.*

UNITED STATES OF AMERICA,
North Carolina, ss:

LEONIDAS C. EDWARDS, PLAINTIFF IN ERROR,
against
ARCHIBALD KEARZY, DEFENDANT IN ERROR.

To Archibald Kearzy, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of North Carolina, wherein Leonidas C. Edwards is plaintiff and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Richmond M. Pearson, chief justice of the supreme court of the State of North Carolina, this 9th day of August, A. D. 1876.

R. M. PEARSON,
Chief Justice of the Supreme Court of the North Carolina.

45 NORTH CAROLINA,
Granville County:

Richard G. Sneed, being duly sworn, says that on the 17th day of August, 1876, he served the within citation on Archibald Kearzy personally, by showing him the original and leaving a copy thereof with him.

R. G. SNEED, *Sh'ff.*

Sworn & subscribed before me this 17th day of August, 1876.

[SEAL.] B. H. COZART,
Clerk Superior Court Granville County.

(Indorsement on cover:) No. 566. Leonidas C. Edwards, pl'ff in error, vs. Archibald Kearzy. N. Carolina sup. court. Filed 16th October, 1876.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1877.

No. 566.

L. C. EDWARDS vs. ARCHIBALD KEARZEY.

HOMESTEAD CASE.

BRIEF FOR PLAINTIFF IN ERROR.

PREPARED BY

ED. GRAHAM HAYWOOD.

RALEIGH:

EDWARDS, BROUGHTON & CO., PRINTERS AND BINDERS,

FEBRUARY, 1878.

Supreme Court of the United States, } No. 566.
October Term, 1877.

LEONIDAS C. EDWARDS vs. ARCHIBALD KEARZY.

BRIEF FOR PLAINTIFF IN ERROR.

The facts in the case; and the manner in which the questions of law therein arise:

This is an action brought, on the 31st of March, 1869, in the Superior Court of Granville county, N. C., by the Plaintiff in error against the Defendant, to recover the possession of a parcel of land in said county; in his complaint, the Plaintiff alleges—that he is the owner in fee simple of said land, entitled to the possession, and that the Defendant keeps him out of possession. By his answer—the Defendant admits that he is in possession of the land and keeps the Plaintiff out, but denies that the Plaintiff is the owner thereof in fee simple, or that he is entitled to the possession of the same. (See Transcript, pp. 3 and 4.)

After issue joined, the action was submitted to the decision of the Court upon a *case agreed*. (See Transcript, p. 10). From which it appears, that on the 6th of March, 1869—the Defendant being then the owner of said land, and in possession—the sheriff of Granville county sold the land to the Plaintiff for $150, at a regular Execution Sale, as the property of the Defendant, under *three* executions then in said sheriff's hands, against his goods and chattels, lands and tenements; which money was paid by the Plaintiff to the sheriff, who thereupon executed to the plaintiff a deed of conveyance in fee simple for the land, which deed was duly proved and registered in the Register's office of Granville

county before this action was instituted. (See Transcript, p. 11, sec. 8.)

It further appears that the sheriff sold the land without any reservation or allotment of a homestead therein for the Defendant—that the tract of land did not and does not exceed $1,000 in value—that the Defendant has always been a citizen of North Carolina, resident in Granville county, on said land—that he had at the time of sale, and has now, no other land—and had then, and has now, minor children. (See Transcript, p. 11, sec. 9.)

The Constitution of North Carolina, of 1868, which went into effect, for all purposes of domestic policy, on the 24th of April of that year—(*Pemberton* v. *McRae*, 75 *N. C. R.* 497) —ordains, Art. X, secs. 1 and 2, that: "The personal proper- "ty of any resident of this State, to the value of five hun- "dred dollars, to be selected by such resident, shall be, and "is hereby exempted from sale under execution, or other "final process of any Court, issued for the collection of any "debt.

"Every Homestead, and the dwelling and buildings used "therewith, not exceeding in value one thousand dollars, "to be selected by the owner thereof, or in lieu thereof, at "the option of the owner, any lot in a city, town or village, "with the dwellings and buildings used thereon, owned and "occupied by any resident of this State, and not exceeding "the value of one thousand dollars, shall be exempted from "sale under execution, or other final process, obtained on "any debt."

And on the 22nd of August, 1868, the General Assembly of North Carolina enacted a statute, to carry the foregoing provisions of the Constitution into effect, (*Laws of N. C.*, 1868, *ch.* 43, *p.* 59,) entitled "*An Act to provide for laying off "the Homestead, and setting apart the personal property exempted "in favor of residents of this State by Article X of the State Con- "stitution.*" Which act prescribed the method in which any resident of the State, who desired it, might take the

benefit of the "*Homestead and personal property exemption, as "guaranteed by Article X of the Constitution of this State.*" This *act* continued in force until April 7th, 1869, when it was repealed by another Act, (*Laws of N. C.*, 1868–'69, *ch.* 137, *sec.* 26, *p.* 339), which substituted another method for carrying the same provisions of the Constitution into effect; and the act of August 22nd, 1868, was in force, so far as consistent with the Constitution of the United States, when the Plaintiff purchased the Defendant's land as aforesaid on 6th March, 1869. The Act of April 7th, 1869, is the existing Homestead Law of North Carolina.

From the *case agreed*, it further appears that, on the 22nd January, 1869, the Defendant had taken advantage of Article X of the Constitution, and the provisions of the *Act* of August 22nd, 1868, and had procured the land in controversy to be laid off to him for a Homestead; and that all the provisions of said *Act* had been complied with, saving the *registration* of the Homestead by the Public Register, which, through that officer's neglect, had not been made. (Transcript, pp. 11 and 12, sec. 10). According to North Carolina law, a judgment does not become a *lien* on the debtor's real estate until it is *docketed* in the office of the Clerk of the Superior Court of the County in which the land lies, and it also appears that no one of the *three* judgments against the Defendant, upon which the foregoing *three* executions issued, was so docketed in the proper office of Granville County, until after the adoption of the Constitution of 1868, (24th April, 1868), and after the ratification of the *Act* of August 22nd, 1868. *Two* of said judgments having been so docketed on 16th December, 1868, (Transcript, p. 10, secs. 1 and 3), and the remaining *one* on the 18th January, 1869, (Transcript, p. 10, sec. 2). Executions appear to have issued on said judgments immediately after they were docketed, but they were first levied upon the land in dispute on the 16th December, 1868, and the 10th January, 1869, (Transcript, pp. 10 and 11, secs. 4, 5, and 6). So that,

at the time of the adoption of the Constitution, none of the judgment creditors had obtained *specific liens* on the land, such as, it has been held by the North Carolina Courts, were not divested by the homestead clause of the Constitution of 1868. (*McKeithan* v. *Terry*, 64 *N. C. R., p.* 25; *Studer* v. *Rogers*, 64 *N. C. R.*, 289).

The Defendant, therefore, claimed in the Superior Court of Granville County, that notwithstanding the sheriff's sale and conveyance to the Plaintiff, he acquired no title to the land; because *Article* X of the Constitution of North Carolina, and the aforesaid *Act* of August 22nd, 1868, secured it to the Defendant for a homestead, and exempted it from sale under the executions. (Transcript, page 12, sec. 11).

But it further appears from the *case agreed*, that the *three* debts, to recover which the foregoing judgments were rendered, were contracted by the Defendant, *one on September 25th*, 1865, (Transcript, p. 10, sec 1); *another on February 27th*, 1866, (Transcript, p. 10, sec 3); *and the third before the 7th of January*, 1868, *at which day and date it was reduced to judgment.* (Transcript, p. 10, sec. 2): *all* contracted by the Defendant before 24th April, 1868, at which date the Constitution of 1868 was adopted.

The only State laws exempting property from sale under execution, which were in force in 1865 and in 1866, are to be found in *Revised Code of North Carolina*, (which went into operation January 1st, 1854,) *chap.* 45, *secs.* 7, 8, 9 and 10; whereby it is provided that (sec. 7) "The wearing apparel, "working tools, arms for muster, one wheel and two pair of "cards, one loom, one Bible and Testament, one hymn book, "one prayer book, and all necessary school books, the prop-"erty of defendant, shall be exempt from seizure under "execution.

(*Sec.* 8.) "In addition to the foregoing articles, there shall "be, in favor of every housekeeper complying with the "provisions of this chapter, exempt from execution on "debts contracted since the 1st day of July, 1845, the fol-

"lowing property, provided the same shall have been set "apart before seizure, to-wit: one cow and calf, ten bushels "of corn or wheat, fifty pounds of bacon, beef, or pork, or "one barrel of fish, all necessary farming tools for one la- "laborer, one bed, bedstead, and covering for every two "members of the family, and such other property as the "freeholders appointed for that purpose may deem neces- "sary for the comfort and support of such debtor's family "such other property not to exceed in value the sum of fifty "dollars at cash valuation. *Provided, however,*" &c., &c. * *

(*Sec.* 9.) Prescribes a procedure for having said exemptions set apart to the debtor. And (*Sec.* 10) renders void all conveyances by sale, deed of trust, or otherwise, for the payments of debts or demands, of any property set apart as aforesaid:

Also, in the *Laws of N. C.*, 1858-'9, *ch.* 38, *p.* 81, (ratified 16th February 1859), entitled "*An act to establish a Freehold "Homestead;*" whereby it is provided in substance, that any white citizen of the State, may, by petition, have laid off to him a homestead of fifty acres in the country, or two acres in town, not to be of greater value than five hundred dollars; and may have a description thereof *recorded by the Register of the county where the land is, and the citizen resides;* and (sec. 3), "That the homestead or house and lot so laid off "*shall not be subject to execution for any debts contracted, or cause "of action arising,* AFTER THE SAME IS REGISTERED."

So, plainly, the land in controversy was not exempt from execution under any law *then* in force, when the debts aforesaid were contracted in 1865 and in 1866. If the additional and increased exemptions from execution provided by the Xth Article of the State Constitution of 1868 were *invalid* as against *these debts of* 1865 *and* 1866, the Plaintiff acquired a good title to the land under the sheriffs sale and conveyance to him, even if such additional and increased exemptions were *valid* as against *the debt contracted in January,* 1868; for it is settled law in North Carolina that "where a sheriff sells

"lands under several executions, and the sale is rightful "under *one*, though unlawful under the others, the pur- "chaser acquires a good title. (*Den ex dem. Bailey* v. *Morgan*, *Bus.*, p. 352.) It is insisted, however, for the Plaintiff, that these additional and increased exemptions provided by the State Constitution of 1868 were also *invalid* as against the debt contracted by the Defendant in 1868.

Before the Defendant contracted the *third* debt, in January, 1868, the General Assembly of N. C. had enacted another statute, which altered and probably increased the amount of property of debtors exempted from execution. By an act ratified February 25th, 1867, entitled "*An act to establish free-* "*hold homesteads for citizens of the State, and also to exempt cer-* "*tain personal property*"—(*Laws of N. C.*, 1866-'7, *ch. LXI, p.* 81,)—it is provided, among other things, in substance, that any citizen of the State may, by petition, in Court, have a homestead laid off to him by five freeholders, not exceeding one hundred acres in the country, or one acre in town; that the freeholders shall make a descriptive account of the same and return it to the Court, when it shall be recorded on the minutes of the Court, and afterwards registered by the *Register* of the county in his books; and (sec. 3,) "That "the homestead so laid off, and registered, *shall not be subject* "*to execution for any debt contracted, or cause of action, or other* "*liability, save taxes,* ACCRUING AFTER THE SAME IS REGIS- "TERED."

(Sec. 7.) "That the following property of each head of a "family, or housekeeper, shall be exempt from execution, "except for taxes, after the ratification of this act, to-wit: "All necessary farming and mechanical tools, one work "horse, one yoke of oxen, one cart or wagon, one milk cow "and calf, fifteen head of hogs, five hundred pounds of pork "or bacon, fifty bushels of corn, twenty bushels of wheat or "rice, household and kitchen furniture not to exceed in "value two hundred dollars, the libraries of licensed attor- "neys at law, practicing physicians, and ministers of the

"gospel, and the instruments of surgeons and dentists used "in their professions."

So, plainly, the land in controversy was not exempt from sale under execution, under any law *then* in force, when the said *third* debt was contracted by the Defendant in January 1868.

The Plaintiff, therefore, claimed in the Superior Court of Granville county, that he acquired a good title to the land by the sheriff's sale and conveyance to him on the 6th of March, 1869—notwithstanding that the Xth Art. of the State Constitution of 1868, and the Act of August 22d, 1868, *purported* to exempt such land from execution, and the Defendant had taken advantage of the provisions of the Constitution and the Act, on the 22d January, 1869; because, said provision of the State Constitution, and the said Act passed in pursuance thereof, exempting said land from execution, were invalid as against debts of the defendant then already existing; since they were State laws, impairing the obligation of those contracts, and were therefore *void* under Art. I, sec. x, cl. 1, of the Constitution of the U. S. (Transcript, p. 12, sec. 12.)

But the Superior Court held that said Xth clause of the State Constitution, and the said statute passed to enforce the same were valid, as against the Defendant's debts contracted by him, in 1865, 1866, and January, 1868, and did not impair the obligations of said contracts; and gave judgment for the Defendant and against the Plaintiff. The plaintiff excepted and appealed to the Supreme Court of North Carolina, and assigned for error the foregoing ruling, decision and judgment of the Superior Court. (Transcript, pp. 12 and 13.) In the Supreme Court, the decision and judgment of the Superior Court were affirmed, and final judgment given against the Plaintiff, (Transcript, p. 15.) who thereupon sued out his writ of Error to this Court. (Transcript, pp. 16 and 17).

Errors Assigned.

And the plaintiff now says in this Court: That the Supreme Court of North Carolina erred in holding that the exemption of the debtor's land, of the value of one thousand dollars, from execution for any debt, ordained by the Xth Article of the State Constitution of 1868, is valid as against his antecedent debts; and is not repugnant to Art. I, sec. x, cl. 1, of the Constitution of the United States, forbidding a State to pass a law which impairs the obligation of contracts, although no such exemption, nor none of equal value, was provided by law, when such debts were contracted.

Argument.

The chapter of the State Constitution of 1868, already quoted, exempts from sale under execution for "ANY *debt*," real estate of the value of one thousand dollars—and personal property of the value of five hundred dollars. It may well be doubted whether these provisions were not intended to be wholly prospective in their effect, and to embrace only debts contracted after the adoption of the Constitution. But the Supreme Court of the State *held* as early as January, 1869, and have ever since steadily adhered to the decision, "that the provisions of the State Constitution, giving a homestead and other exemptions, apply to pre-existing contracts, "as well as to such as were entered into afterwards." (*Jacobs* v. *Smallwood*, 63 *N. C. R.*, 112; *Hill* v. *Kessler*, *Ib.* 437; *Garrett* v. *Cheshire*, 69 *N. C. R.*, 396; *Wilson* v. *Sparks*, 72 *N. C. R.*, 208; *Edwards* v. *Kearzy*, 75 *N. C. R.*, 409.) And for the purposes of this case, such construction of the Constitution must be adopted. The acts of the General Assembly of 22d August, 1868, and of the 7th of April, 1869, are strictly in pursuance of the Constitutional provisions. The Constitution of the United States, Art. I, sec. x, cl. 1, forbids a State to "pass any law impairing the obligation of contracts." The single question which we have to determine is, whether this provision of the State Constitution, securing a home-

stead exemption to the debtor of the value of one thousand dollars, and of the act of 22nd August, 1868, which is but in pursuance of the Constitution, is in violation of the Constitution of the United States, when extended by construction to embrace executions issued to enforce the collection of *antecedent* debts.

Before proceeding to discuss the main question, it may be well to dispose of certain arguments by which it has been attempted to sustain such State legislation as that in question here, the positions maintained in which have been repeatedly overruled, and are now finally settled adversely to their advocates by numerous adjudications of this Court. These positions are no longer open for discussion.

1. The *State law*, impeached upon the ground that it impairs the obligation of a contract, derives no additional authority as against the prohibition of the Federal Constitution, by reason of the fact that it is embodied in a State Constitution. Where the *popular* will declared in the solemn form of a State Constitution, is in contravention of the Supreme Law of the land, it is as entirely a void and inoperative law as is the *legislative* will embodied in a statute under like conditions. The prohibition of the Federal Constitution is upon *the State*, without regard to the form its laws may take, or the agencies which enact them. It is certain that the obligation of a contract can no more be impaired by the *Constitution* of a *State*, than by an *act* of her *Legislature*. The decisions of this Court to that effect are too numerous and authoritative to be even questioned. This Court said in *R. R. Co.* v. *McClure*, (10 Wall., 515,) "The "Constitution of the United States declares, that no State "shall pass a law 'impairing the obligation of contracts.' "The Constitution of a State is undoubtedly a law within "the meaning of this prohibition. A State can no more do "what is thus forbidden by one than by the other. There "is the same impediment in the way of both." In *White* v. *Hart*, (13 Wall., 652), "It is well settled by the adjudica-

"tions of this Court, that a State can no more impair the "obligation of a contract by adopting a Constitution than "by passing a law. In the eye of a constitutional inhibi- "tion, they are substantially the same thing." In *Gunn* v. *Barry*, (15 Wall., 623), "A State can no more impair an "existing contract by a constitutional provision than by a "legislative act; both are within the prohibition of the Na- "tional Constitution." (See also *Jefferson Br. Bank* v. *Skelly*, 1 *Black.*, 486; *Dodge* v. *Woolsey*, 18 *How.*, 334.)

2. It has been sometimes argued 'that when the Constitu- 'tion of the State, containing the Homestead provision, was 'adopted in 1868, North Carolina was not a State in the 'Union; that she was a conquered territory; and that 'hence the inhibition on the States, by the Constitution of 'the United States, to pass any law impairing the obliga- 'tion to contracts, had no application to North Carolina; 'that the State Constitution of 1868 had no validity until 'approved by Congress, was the act of Congress and not of 'the State; and though a State cannot pass any law im- 'pairing the obligation of contracts, Congress may; and 'for this reason the inhibition of the Constitution of the 'United States does not reach our case."

This question, which had before been incidentally discussed in other cases before this Court, was directly brought up and pronounced upon by this tribunal in *White* v. *Hart*, (13 Wall., 646.) In that case, the Constitution of Georgia of 1868, adopted under like circumstances and conditions with that of North Carolina of the same year, contained the following clause: "Provided that no court or officer shall have, nor shall the "General Assembly give, jurisdiction to try, or give judg- "ment on, or enforce any debt, the consideration of which "was a slave, or the hire thereof." This constitutional provision it was attempted to sustain upon the reasoning above suggested. This Court said of the proposition—'That 'the Constitution of Georgia of 1868, was adopted under the 'dictation and coercion of Congress, and is the Act of Con-

'gress rather than of the State.'—"This proposition is clearly "unsound and requires only a few remarks. * * * We "may add, that if Congress had expressly dictated and "expressly approved the proviso in question, such dictation "and approval would be without effect. Congress has no "power to supersede the National Constitution." (13 *Wall.*, "649.) "At no time were the rebellious States out of the "Union. Their rights under the Constitution were sus- "pended but not destroyed. Their constitutional duties "and obligations were unaffected and remained the same." "(13 *Wall*, 651). "Georgia, after her rebellion and before "her representation was restored, had no more power to "grant a title of nobility, to pass a bill of attainder, an *ex* "*post facto* law, or law impairing the obligation of contracts, "or to do anything else prohibited to her by the Constitu- "tion of the United States, than she had before her rebellion "began, or after her restoration to her normal position in "the Union." (13 *Wall.*, 652). In *Gunn* v. *Barry*, (15 Wall., 610), the same question was again raised, to sustain the Homestead Exemption clause of the Georgia Constitution of 1868, in its retrospective aspect, and this Court again says: "Georgia, since she came into the Union as one of "the original thirteen States, has never been a State out of "the Union. Her constitutional rights were, for a time, "necessarily put in abeyance, but her constitutional disa- "bilities and obligations were in no wise affected by her "rebellion. The same view is to be taken of the provision "in her organic law, and of the statute in question, as if "she had been in full communion with her sister States "when she gave them being. Though her Constitution was "sanctioned by Congress, this provision can in no sense be "considered an act of that body. The sanction was only "permissive, as part of the process of her rehabilitation, and "involved nothing affirmative or negative beyond that "event. If it were express and unequivocal, the result "would be the same. Congress cannot by authorization or

" ratification, give the slightest effect to a State law or Con-
" stitution in conflict with the Constitution of the United
" States. That instrument is above and beyond the power
" of Congress and the States, and is alike obligatory upon
" both." (15 *Wall.*, 623).

These decisions upon a constitutional question made by the highest tribunal in the land, specially constituted and clothed with the authority to adjudicate questions of this character, are binding alike upon the Government, the States, the people of the States, and all the Courts, and whatever differences of opinion may once have existed, *must* be adopted now as settling forever the *status* of the seceding States. While it involves an apparent and monstrous fallacy to maintain, either that Congress can authorize a State to do that which the Constitution of the United States prohibits a State from doing, or that Congress may itself supersede the National Constitution.

We may, therefore, safely assume that the validity of the Homestead Exemption of the North Carolina Constitution of 1868, when extended to antecedent debts, will not be sustained by this Court upon either of the grounds immediately hereinbefore suggested, and shortly disposed of.

A State law, which exempts from sale, under execution, any substantial part of the debtor's property, which was not so exempt at the time when the debt was contracted, impairs the obligation of the contract, and is repugnant to the Constitution of the United States, and void. We hesitate to elaborate this proposition; for the terms used in the Constitution, " no State shall pass any law impairing the obli-
" gation of contracts," are such, in the language of Chief Justice Marshall, that "it would seem difficult to substitute
" words which are more intelligible or less liable to miscon-
" struction." (*Sturgess* v. *Crowninshield*, 4 *Wheat.*, 122.) And, by the settled judicial interpretation of this Court, their meaning has been indubitably and irreversibly fixed by a weight of authority which cannot now be shaken. More-

over, by recent adjudication of this Court the immediate question in hand has been distinctly and finally passed upon and decided, and a State law of Georgia, similar to the one of North Carolina now under consideration and enacted under like conditions in all respects, was condemned as within the Constitutional prohibition.

Gunn v. *Barry*, (15 Wall., 610), is essentially like the case here presented. The Constitution of Georgia largely increased the amount and value of the property exempted from execution. This Court held, that, as against pre-existing debts, the law manifestly impaired the obligation of the contracts. In that case the creditor had reduced his debt to a judgment, which was a lien upon the property, when the new exemption law withdrew from liability a part thereof upon which the lien had attached; and because of this *accident*, the Supreme Court of North Carolina, in our case, and in *Garrett* v. *Cheshire* (69 N. C. R., 396), and in *Wilson* v. *Sparks*, (72 N. C. R., 208), *assumes* that there is a distinction between these cases and *Gunn* v. *Barry*, in the application of the constitutional inhibition against laws which impair the obligation of contracts. But while this Court in *Gunn* v. *Barry* remark upon that fact, they *pointedly* refrain from resting the decision upon it, and it is plain the result would have been the same, had there been no judgment and lien when the new exemption law went into effect. In the eye of the Constitutional provision one sort of contract is as binding as another; whether it be oral, or written, or under seal, or merged in judgment, or a specific lien on the debtor's property, is all one, in the application of the constitutional inhibition against impairing its obligation by State laws. Hence this Court, in *Gunn* v. *Barry*, while they say of the Georgia law, "It withdraws the land "from the lien of the judgement, &c.; It is in effect taking "one person's property and giving it to another without "compensation. This is contrary to reason, and justice, and "to the fundamental principles of the social compact,"—

make haste to add: "*But we must confine ourselves to the con-*
"*stitutional aspect of the case.*" (15 Wall, 622, 623.) When *Gunn* v. *Barry* was decided—if the State law did not impair the obligation of the contract,—notwithstanding it divested vested rights, and deprived one of his property without due process of law—it did not come within the scope of the restrictions of the Federal Constitution, and gave no right of appeal from the decision of the State Court to the Federal tribunal, (*Satterlee* v. *Matthewson*, 2 *Pet.*, 386; *Chas. Riv. Bridge Case*, 11 *Pet.*, 538; *Watson* v. *Mercer* 8 *Pet.*, 110; *Balt. & Sus. R. R.* v. *Nesbit.* 10 *How.*, 401; *East Hartford* v. *Hartford Br. Co.*, *Ib.*, 539,) and if it did impair the obligation of the contract, it was within the scope of the restriction of the Federal Constitution, whether the contract had, or had not, been merged in a judgment, and become a lien upon the debtor's property, before the law was enacted, and, as we understand *Gunn* v. *Barry*, this Court *expressly* so said, in their opinion in that case.

In a still later case, *Nichols* v. *Eaton*, (91 U. S. R., 1 Otto., 716), the following language is used by this Court: "It is "believed that every State in the Union has passed statutes "by which a part of the property of the debtor is exempt "from seizure on execution or other process of the courts; "in short, is not by law liable to the payment of his debts. "This exemption varies in its extent and nature in the "different States. In some it extends only to the merest "implements of household necessity; in others it includes "the library of the professional man, however extensive, "and the tools of the mechanic; and in many it embraces "the homestead in which the family resides. This has "come to be considered in this country as a wise, as it cer-"tainly may be called a settled, policy in all the States. To "property so exempted the creditor has no right to look, "and does not look, as a means of payment when his debt "is created; *and while the Court has steadily held, under the* "*constitutional provision against impairing the obligations of*

" *contracts by State laws, that such exemption laws, when first en-*
" *acted, were invalid as to debts then in existence, it has always held,*
" *that, as to contracts made thereafter, the exemptions were valid.*

" This distinction is well founded in the sound and unan-
" swerable reason, that the creditor is neither defrauded nor
" injured by the application of the law to his case, as he
" knows, when he parts with the consideration of his debt,
" that the property so exempt can never be made liable to
" its payment. Nothing is withdrawn from this liability
" which was ever subject to it, or to which he had a right to
" look for its discharge in payment." (91 *U. S. R.*, 1 *Otto.*, 726.)

The case of *Lessley* v. *Phipps*, (49 Mississippi Rep., 790,) and *The Homestead Cases*, (22 Gratt. (Va.) 266), are to the same effect with *Gunn* v. *Barry*.

In *Green* v. *Biddle*, (8 Wheat., 1), it was said that a law which clogs the remedy by restrictions and conditions tending to diminish the value and amount of the thing recovered, impairs the right. It was further said that if the new remedy materially impairs the right, it is as much a violation of the compact as if it overturned the right.

In *Bronson* v. *Kenzie*, (1 How., 297), after the execution of the mortgage in question, the legislature of Illinois passed a law requiring mortgaged property to bring two-thirds of its appraised value, and allowed the mortgagor a year after the sale to redeem. These new conditions upon the pre-existing remedy were held to impair the right.

In *McCracken* v. *Hayward*, (2 How., 608), a law requiring property sold under execution to produce two-thirds of its appraisement, was declared for the same reason to be inoperative and void.

In *Planters Bk.* v. *Sharp*, (6 How., 327), a law forbidding a Bank to assign its negotiable *choses in action*, and prohibiting any recovery in the Courts on the same after assignment, was held to impair the obligation of those contracts.

In *VanHoffman* v. *Quincey*, (4 Wall., 550), a law of Illinois

allowed the City of Quincey to issue and negotiate coupon bonds, but required the city to levy a sufficient special tax to pay the coupons. A subsequent legislature so restricted the power of taxation, that enough money could not be raised to meet the obligations. The last law was held to be void.

If such laws may be set aside, what vindication can be made of one, which withdraws *altogether* from liability, twice or thrice as much property of the debtor, as was exempted when the debt was contracted? The principle of the adjudications is, that the creditor may trust to the law as it is when he contracts, to know how much of the estate of the debtor he may look to for satisfaction. The existing law is in the contemplation of both parties. That furnishes approximately a safe basis of credit. If subsequent laws may come in and deny satisfaction out of one-half, or three-fourths, or nine-tenths, or the whole of the property, before liable, it is too plain for argument or illustration that such a statute seriously impairs the right.

In *Garrett* v. *Cheshire*, (69 N. C. R., 396) and *Wilson* v. *Sparks* (72 N. C. R., 208), the Supreme Court of North Carolina endeavor to avoid the effect of the decision in *Gunn* v. *Barry*, and to distinguish the Homestead clause of our Constitution from that of the Georgia Constitution, by advancing the proposition that our Constitution does not *materially* increase the exemptions from execution, which had before been allowed to debtors by our law. We have already cited this Court to our previous exemption laws in the early part of this brief, and set them out in detail—it is unnecessary to repeat them here; but adopting the language of this Court in *Gunn* v. *Barry*, "no one can cast his eyes over the "former and later exemptions, without being struck by the "greatly increased magnitude of the latter."

When the Defendant contracted the debts mentioned in the *case agreed* in 1865, and in 1866, (Transcript, p. 10, secs. 1 and 3), what were the mutual rights and obligations of

creditor and debtor? The obligation of the Defendant was to pay his debt. And the right of the creditor was to enforce its payment. Under the laws existing at those dates the creditor had a right to subject, by execution, the whole property of the Defendant—except 'his wearing apparel, 'working tools, arms for muster, one wheel and two pairs 'of cards, one loom, one bible and testament, one hymn book, 'one prayer book, and all necessary school books;" except also, "one cow and calf, ten bushels of corn or wheat, fifty 'pounds of bacon, beef or pork, or one barrel of fish, all 'necessary farming tools for one laborer, one bed, bedstead 'and covering for every two members of the family; and 'other personal property not exceeding in value fifty dol-'lars, *provided the same was set apart to the debtor before seizure 'under execution.*" (*Rev. Code of N. C., chap.* 48, *secs.* 7, 8, 9, 10.) If the debtor *before these debts were contracted, had given his creditors notice by having the same registered in the Register's office of the county,* he might also hold exempt from execution, fifty acres of land in the country, or two acres in town, of no greater value than five hundred dollars. (*Laws of N. C.*, 1858-'9, *ch.* 38, *secs.* 1 *and* 3), but not having given such notice, by registration, he was entitled to *no* exemption of real estate, and the creditor had a right to subject by execution *all* his land. Nay more—the Defendant was prohibited by law from withdrawing his property from that liability, and appropriating it, either openly or upon secret trust, to his own use, or the use of his family. Every attempt to do that was, by law, declared fraudulent and void. But this Homestead law of 1868, to the extent of land of the value of one thousand dollars, and personality of the value of five hundred dollars (less the previous exemptions), takes away the right which the creditor had at the time that the contract was entered into to enforce the payment of his debt, and allows the debtor to make a conveyance of the property, to that extent, for the use of himself and family, which, before the law was passed, would have been pronounced by the

Courts fraudulent and void. How can it be said that such a law does not *materially increase* the amount and value of the exemptions from execution, beyond what they were when the debt was contracted in 1865, and in 1866? In our case, and in most cases, the obligation of the contract has not only been impaired, but it has been entirely destroyed. At the time the contracts were entered into every acre of the land in controversy was bound for the debt. The right of the creditor was to subject it by legal process to the payment of his debt. This right is entirely abrogated and annulled by the Xth Article of the State Constitution of 1868. How then can it be said that such a law does not impair the obligation of these contracts? If a law which only prohibits a creditor from taking the property at less than two-thirds of its sworn value (*McCracken* v. *Hayward*, 2 *How.* 608) cannot be supported, it needs no argument to prove that a law cannot be upheld, *which wholly withdraws all the debtor's property* from the reach of the creditor.

So, of the debt which the Defendant contracted in January, 1868. (Transcript, p. 10, sec. 2). It is true, at that time the exemptions had been increased from what they were in 1865, and 1866, (*vide Laws of N. C.*, 1866-'67, *chap. LXI, secs.* 1, 2, 3 and 7, *already set out in this brief,*) but it must have been very rarely the case that the articles of personality mentioned in the act of Feb. 25th, 1867, equalled in value five hundred dollars, and the act exempted *no realty absolutely*, only a homestead *after it was registered, for debts contracted after the registration.* So the creditor whose debt was contracted in January, 1868, had then the right to subject every acre of this land to the payment of his debt, and *mutatis mutandis*, the argument immediately preceeding applies to this debt also. We only ask this Court to *compare* the exemption laws which existed in 1865, 1866, and January, 1868, with the Xth Article of the State Constitution of 1868, to determine whether the exemptions allowed in the latter are

not substantially and materially an enlargement of those allowed in the former.

In *Wilson* v. *Sparks*, (72 N. C. R., 211,) the Supreme Court of North Carolina even rely upon the Act of General Assembly of N. C., of 1848-'9, ratified 28th January, 1849, (*Laws of N. C.*, 1848-'9, *ch. XLI, p.* 89,) entitled "*An act making better* " *and more suitable provisions for femes covert,*" as a law increasing exemptions from Execution at that time, but upon examination this *Act* will be found entirely *prospective* in its character; by sec. 1, it 'secures to the wife, *hereafter married*, 'all lands or real estate which she may have at marriage, or 'may thereafter acquire;' by sec. 2, it 'exempts such lands 'or real estate from execution against the husband;' by sec. 3, it 'extends the foregoing provisions to *femes covert* already 'married, who acquire such lands or real estate *after the first* '*day of March*, 1849;' we cannot perceive that its provisions throw any light on, or have any connexion with the subject now under discussion.

We are not ignorant that in *Morse* v. *Gould*, (11 N. Y. R.; 1 Kernan's R. 289), and *Hill* v. *Kessler*, and *Jacobs* v. *Smallwood*—North Carolina cases already cited—a different doctrine is laid down from that maintained in this brief; but this difference of judicial opinion and interpretation grows out of a confused and untenable distinction between laws which operate on the rights under a contract, and those which operate on the remedies by which they are to be enforced. This distinction is built up on the *dicta* of Judges, wrested from the connection in which they were used, and cemented into ingenious theories to sustain popular legislation.

In these decisions it is attempted to be maintained:

1st. That the law in question affects only the *remedy*, and does not impair the obligation of contracts; that all exemption laws must be considered as affecting the remedy only, and that the State has the right to modify the remedy as it may deem proper:

2d. That the power of the State to exempt certain articles of necessity has never been questioned, and that the *amount* of exemption is a matter of discretion with the legislative department of the government, with which the judicial department cannot interfere:

It is upon these propositions that the argument in favor of the validity of the "homestead exemption" as against antecedent debts is based; and if either one is sound, the law must be sustained as valid and constitutional.

All will agree that a State cannot abrogate a contract made between two individuals, legal when entered into. It never has been denied, that the legislative power extends to a modification of the remedy. This was distinctly stated in the early case of *Sturgess* v. *Crowninshield*, (4 Wheat. 122.) The debatable ground begins, when a law purporting to regulate the *remedy* is challenged for trenching upon the *right*. The difficult task has been, and is, to define the limits beyond which remedial legislation may not go, without infringing upon *the right*. The decisions of this Court, from *Fletcher* v. *Peck*, in 6 Cranch, decided in 1810, down to *Walker* v. *Whitehead*, in 13 Wall., decided in 1872, have given a uniform and unvarying construction to the clause of the Federal Constitution now under consideration. From these decisions may be extracted the following propositions defining the true interpretation and legal import of the constitutional provision referred to:

1. The obligation of a contract is the duty of performance according to its terms. The remedy or means of enforcement, being a part of the "obligation," which the States cannot by legislation impair. The municipal law enters into and forms a part of this obligation, and to that, parties must be considered as referring, in order to enforce performance.

2. Whilst the State may modify the remedy, it is under a duty, if it interferes at all, to provide a remedy as efficient

and substantial as that subsisting when the contract was made.

3. The remedy is inseparable from the obligation, otherwise the contract would be of the nature of those imperfect obligations or moral duties, subject to the mere caprice and will of individuals.

4. Whilst the State is left free to alter the remedy, to prescribe the modes of suit and process, it cannot clog it with conditions and restrictions so as materially to impair its efficiency. (*Fletcher* v. *Peck*, 6 Cranch, 87; *Green* v. *Biddle*, 8 Wheat., 1; *Sturges* v. *Crowninshield*, 4 Wheat., 122; *Ogden* v. *Sanders*, 12 Wheat., 213; *Bronson* v. *Kenzie*, 1 How., 311; *McCracken* v. *Hayward*, 2 How., 608; *VonHoffman* v *Quincy*, 4 Wall., 553; *Hawthorne* v. *Calef*, 2 Wall., 10; *White* v. *Hart*, 13 Wall., 646; *Gunn* v. *Barry*, 15 Wall., 610; *Walker* v. *Whitehead*, 16 Wall., 314).

As early as *Green* v. *Biddle*, (8 Wheat., 1), it was said that if the new remedy materially impairs the right, it is as much a violation of the compact, as if it overturned the right. Chief Justice Taney, in *Bronson* v. *Kinzie*, (1 How., 311), concurred fully in the rule, as thus stated, adding, that the "remedy is the part of the municipal law which "protects the right, and the obligation by which it enforces "and maintains it. * * * It is this protection which "the clause of the Constitution was mainly intended to "secure." These principles were again affirmed in *Curran* v. *Arkansas*, (13 How., 319), and *Freeman* v. *Howe*, (24 How., 460).

However, a nice distinction was early taken, by very high authority, in this Court, between the *obligation* of a contract, and the *remedy* for its infringement or non-performance; notably in the cases of *Sturgess* v. *Crowninshield*, (4 Wheat., 200), *Green* v. *Biddle*, (8 Wheat., 76—84), and *Mason* v. *Haile*, (12 Wheat., 379), the general and sweeping character of the language of which cases, and the omission to state, in the same connection, any restrictions, or to fix

any practical line of demarkation in regard to the power of the States over the remedy, were perhaps the cause why this question has been much misunderstood; and certain *dicta* of Chief Justice Taney in *Bronson* v. *Kinzie*, torn from their context, and obscured by giving only a garbled extract from his opinion, have been used as the ground work and scaffolding for every judicial decision, which we have seen, sustaining the validity of the "homstead exemption," as applicable to antecedent contracts. Taken alone, these *dicta* afford *some* foundation for the position taken in the cases referred to. But the Chief Justice adds this significant language; "Whatever belongs *merely* to the remedy may be "altered according to the will of the State, *provided the alte-* "*ration does not impair the obligation of the contract. But if* "*that effect is produced, it is immaterial whether it is done by* "*acting on the remedy, or directly on the contract itself. In either* "*case it is prohibited by the Constitution.*" (1 How., 316).

But even this *dictum* of Chief Justice Taney has been virtually overturned by the decisions in *McCracken* v. *Hayward*, (2 How., 608), and *Planters Bank* v. *Sharp*, (6 How., 327). Without citing all the cases which consider the subject, we shall content ourselves with quoting freely from the language of the later ones, which adopt a sterner and more definite tone; and ever since *VonHoffman* v. *Quincy*, (4 Wall., 550), it will be observed, that instead of relaxation, the later cases, in this Court, cling with tenacity to the strict integrity of the contract, and repudiate all legislation which in effect impairs its force and value, and enunciate, without doubt or uncertainty, the broad doctrine, that all laws which subsist at the time and place of making the contract, whether they affect its validity, its construction, its discharge, *or its enforcement*, enter into and form part of it, as entirely and perfectly as if they rested on the basis of a distinct agreement.

In *VonHoffman* v. *Quincy*, (4 Wall., 550), this Court said: "It is also settled that the laws which subsist at the time

" and place of the making of a contract, and where it is to " be performed, enter into and form a part of it, as if they " were expressly referred to or incorporated in its terms. " This principle embraces alike those which affect its valid- " ity, construction, discharge, and enforcement. (4 Wall., " 550.)

* * * * * * * *

" A statute of frauds embracing a pre-existing parol con- " tract not before required to be in writing would affect its " validity. A statute declaring that the word *ton* should " thereafter be held, in prior as well as subsequent contracts, " to mean half or double the weight before prescribed, would " affect its construction. A statute providing that a previ- " ous contract of indebtment may be extinguished by a pro- " cess of bankruptcy would involve its discharge, and a stat- " ute forbidding the sale of any of the debtor's property, un- " der a judgment upon such a contract, would relate to the " remedy.

" It cannot be doubted, either upon principle or authori- " ty, that each of such laws passed by a State would impair " the obligation of the contract, *and the last mentioned not less* " *than the first. Nothing can be more material to the obligation* " *than the means of enforcement. Without the remedy the contract* " *may, indeed, in the sense of the law, be said not to exist, and its* " *obligation to fall within the class of those moral and social duties* " *which depend for their fulfillment wholly upon the will of the in-* " *dividual. The ideas of validity and remedy are inseparable, and* " *both are parts of the obligation, which is guaranteed by the Con-* " *stitution against invasion.* The obligation of a contract 'is " the law which binds parties to perform their agreement.' " The prohibition has no reference to the degree of impair- " ment. The largest and the least are alike forbidden. (4 Wall., 552.)

" It is competent-for the States to change the form of the " remedy, or to modify it otherwise, as they may see fit, pro- " vided no substantial right secured by the contract is there-

"by impaired. No attempt has been made to fix definitely "the line between alterations of the remedy, which are to "be deemed legitimate, and those which, under the form of "modifying the remedy, impair substantial rights. Every "case must be determined upon its own circumstances. "Whenever the result last mentioned is produced the act is "within the prohibition of the Constitution, and to that ex- "tent void. If these doctrines were *res integræ* the consist- "ency and soundness of the reasoning which maintains a "distinction between the contract and the remedy—or, to "speak more accurately, between the remedy and the other "parts of the contract might perhaps well be doubted. * "* * * * * The doctrine upon the subject established "by the latest adjudications of this Court renders the dis- "tinction one rather of form than substance." (4 Wall., 553, 554.)

In *White* v. *Hart*, (13 Wall., 653,) the doctrine enunciated in *Von Hoffman* v. *Quincy*, is re-affirmed, and this Court quotes the language of the former judgment in the very words which it had therein previously adopted.

In *Walker* v. *Whitehead*, (16 Wall., 314,) this Court said:

"The Constitution of the United States declares that no "State shall pass any "law impairing the obligation of con- "tracts."

"These propositions may be considered consequent ax- "ioms in our jurisprudence:

"The laws which exist at the time and place of the mak- "ing of a contract, and where it is to be performed, enter "into and form a part of it. This embraces alike those "which affect its validity, construction, discharge, and *en- "forcement. Nothing is more material to the obligation of a con- "tract than the means of its enforcement. The ideas of validity "and remedy are inseparable, and both are parts of the obligation "which is guaranteed by the Constitution against impairment;*

"The obligation of a contract "is the law which binds "the parties to perform their agreement;"

"Any impairment of the obligation of a contract—the de-
"gree of impairment is immaterial—is within the prohibi-
"tion of the Constitution;

"The States may change the remedy, provided no sub-
"stantial right secured by the contract is impaired. When-
"ever such a result is produced by the act in question, to
"that extent it is void. The States are no more permitted
"to impair the efficacy of a contract in this way than to at-
"tack its validity in any other manner. Against all as-
"saults coming from that quarter, whatever guise they may
"assume, the contract is shielded by the Constitution. It
"must be left with the same force and effect, including the
"substantial means of enforcement, which existed when it
"was made. The guarantee of the Constitution gives it
"protection to that extent." (16 Wall., 317, 318.)

And in *Gunn* v. *Barry*, (15 Wall., 610,) the doctrine of these cases were re-affirmed, applied to the facts of that case, and the very point which we are now considering was adjudicated.

As to the second position taken by the advocates of the "homestead exemption," indicated above, viz: that the States can exempt articles of necessity as against antecedent contracts—and that *the amount* of the exemption must necessarily be a matter of legislative *discretion*. We must admit there would be great force in the second branch of this proposition, if the first were sound, and could be successfully maintained. But it is completely answered by the cases already herein cited. A State cannot minister even to the most pressing necessities of her citizens by impairing the obligation of subsisting contracts. Whatever power a *distinct* civic community may have in this respect, to the States of this Union it is prohibited by the *express* language of the National Constitution. In our view, the true doctrine, sustained by the great weight of authority is, that such property as was subject to execution at the time the debt was contracted, must continue subject to execution until the

debt is paid, so long as it remains in the hands of the debtor. The logical result of conceding to the States the power to exempt from execution, by a subsequent law *any* property of the debtor which was liable to execution at the time the debt was contracted, is to concede to them the power to exempt *all* his property; in our opinion no middle ground can be defined between holding that *none* of the debtor's property can, by a retrospective law, be withdrawn from the reach of the creditor, and admitting that the *whole* of his estate may be exempted from sale under execution. The whole opposing argument rests upon the fallacy of assuming that a State has the power to make exemptions of what is "*necessary*" to the debtor or his family; and this assumption, in its turn, rests upon a mere *dictum* of Chief Justice Taney, torn from its context and from its connection with language which qualifies its meaning, and already practicaliy overruled by this Court, which favors the opinion that "necessary imple-"ments, or the tools of a mechanic, or articles of necessity "in household furniture, like wearing apparel, may be ex-"empted from sale on execution"— this is seized upon, in some of the Southern States, to uphold as valid, exemption laws, which, in the great majority of cases, exempt the whole property of the debtor. Whereas this Court, whenever it has pronounced a *decision* upon the question involved, has uniformly and invariably *held* the correct principle to be,—that whenever, in the interest of humanity or sound policy, a State adds to the list of exemptions other property of the debtor not exempted before, she must be careful to make such laws prospective—never retrospective—in their operation; applying the additional exemptions to future—never to past—obligations. We have already cited the language of this Court in *Nichols* v. *Eaton*, (91 U. S. R., 726), where they say: "*This Court has steadily held, under the Con-*"*stitutional provision against impairing the obligations of contracts* "*by State laws, that such exemption laws, when first enacted, were* "*invalid as to debts then in existence.*"

As to future obligations the State may make the exemption as broad as she pleases, she may abolish credit altogether. But she cannot by retrospective legislation impair the obligation of subsisting contracts. If she could, under the dictates of humanity and advancing civilization, so secure to her citizens necessaries and comforts for themselves and for their families, the doctrine contended for by the Defendant in this case is an inevitable sequence, and she must herself have the power to decide what those necessaries and comforts embrace—whereby the integrity of contracts, and the security for their faithful execution in every State of the Union, would no longer be placed under the protection of the Constitution of the United States, but would rest entirely upon the discretion of the several States; and the very object and end, to attain which a positive clause was inserted in the National Constitution prohibiting any State from passing any law to impair the obligation of contracts, would be entirely defeated, and this provision of the fundamental law of the nation unconditionally annulled and abrogated.

JOS. B. BATCHELOR,
ED. GRAHAM HAYWOOD,
for Plaintiff in Error.

NOTE.—On page two (2) of printed transcript, page four (4) of written transcript, it appears that the Plaintiff begun his action, by suing out process on the 1st of March, 1869; it should be the 31st of March, 1869, and we consent and agree that the record of the Supreme Court of the United States shall be amended accordingly.

BATCHELOR,
HAYWOOD, } *for Plaintiff in Error.*

No. 566.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

LEONIDAS C. EDWARDS,
PLAINTIFF IN ERROR,

Against

ARCHIBALD KEARZEY.

Writ of Error to the Supreme Court of North Carolina.

BRIEF OF A. W. TOURGEE,

ATTORNEY FOR DEFENDANT.

LEONIDAS C. EDWARDS,
Plaintiff in Error,
Against
ARCHIBALD KEARSEY.

Defendant's Brief.

STATEMENT OF FACTS.

The facts are correctly stated in the Brief of the counsel for the plaintiff in error, (*pages 1 to 9, inclusive, of their Brief*).

The provisions of the Constitution and the laws of the State, bearing upon the questions at issue in the writ of error, are also substantially and sufficiently set out in their Brief, (pp. 4, 6, 7, 8,) and such statement is adopted by me, except in those parts where the same is argumentative.

It is also admitted and agreed that the time at which process was sued out, is erroneously stated in the printed transcript, to be the first of March, 1869, as specified in the note to the plaintiff's Brief, and that the same may be corrected, so as to be and read, the 31st of March, 1869.

PROPOSITIONS OF LAW ADMITTED.

The first proposition of law, stated on page 11, of the Brief of plaintiff's counsel, to-wit: "That a State law derives no additional authority, as against any inhibition of the Federal Constitution by being embraced in the Constitution of this State"—is admitted.

The second proposition of law, stated on page 12, of their Brief, to-wit: That neither the relations of North Carolina, when the Constitution was adopted in 1868, nor the approval of that Constitution by the Congress of the United States, are sufficient to exempt the provisions of that Constitution from the operation of any inhibitory clause of the Federal Constitution.

STATEMENT OF QUESTION.

The question fairly stated, is: Has a State the right to provide, by law, that one thousand dollars in value of real estate, to be ascertained and specified according to law, belonging to any resident of the State, shall not be subject to execution for *any* debt, whether

the same be contracted *before* or after such enactment, during the life time of said debtor and the minority of his children? or is such law violative of clause 1, Section X, Article I, of the Constitution of the United States, declaring that "no State shall pass any law impairing the obligation of contracts?"

ARGUMENT.

While it is true that Chief Justice Marshall declared that "it would seem difficult to substitute words less liable to misconstruction" for those used in the clause of the Constitution, now under consideration, yet this fact nevertheless appears, that no provision of that instrument has been more difficult to construe, and no term has so long eluded accurate and satisfactory definition as the phrase, "the obligation of contracts." Whether the "*obligation* of a contract" includes the *whole* or *any part* of the remedy for its violation, is a question which has required the most serious consideration. By a comparison of *all* the cases in which it has been considered by the Court, it will appear to have been universally held:

1st. That the "obligation" of the contract does *not* include the *entire remedy* for the violation of the contract.

2nd. That it *does* include *some part* of that remedy.

The contention of the defendant in this case is:

1st. That these propositions, deducible from *all* the decided cases, are logically so inconsistent as to show that the true construction has not yet been elucidated.

2nd. That if any part of the "remedy" is included by the term "obligation," the present instance does not fall within the inhibition.

"OBLIGATION" DOES NOT INCLUDE THE WHOLE "REMEDY."

1. The remedy embraces everything that the creditor may lawfully do, or have done, in his behalf, upon a violation of the contract. All that is included in a suit or action from the issue of process to the satisfaction of judgment, is a part and parcel of the creditor's remedy. If the term "obligation" includes the *whole* of the remedy, then any change in the conduct of an action or the enforcement of a judgment, which tends, in any degree, to prevent, hinder, delay or render in any manner less speedy and efficacious, any part of the remedy, would be violative of the constitutional inhibition.

Imprisonment for debt was at one time just as much a part of the *remedy* for the violation of the contract as an execution. The undeniable *right* of the judgment creditor was to keep the judgment debtor in prison until his judgment was satisfied. It was *just as much* a matter of course, followed just as clearly from the relation of debtor and creditor, as does the right to levy on property and expose it to sale. It was a power with which he was clothed the *instant* the relation of debtor and creditor was established, and *solely* by virtue of the *contract* between them. Yet it has repeatedly been held that this part of the *remedy* might be taken away from the creditor without violating the "obligation" of a "contract."

2 Kent Com., 397.

3 Story Com., § 1392, p. 268.

Sturgess v. *Crowninshield*, 4 Wheat, 122, 200, 201.

Mason v. *Haile*, 12 Wheat, 370.

Beers v. *Haughton*, 9 Pet., 328, 359.

Cook v. *Moffat*, 5 How., 316.

2. Again, if a creditor has a right to subject the property of the debtor to the satisfaction of his claim, he has the right to subject the *whole* of it, not exempt at the date of his contract. Yet in *Bronson* v. *Kinzie*, 1 How., 315, Chief Justice Taney delivering the opinion of the Court, says: "*Undoubtedly the State may regulate the mode of proceeding in its courts at pleasure, both as to past and future contracts. It may, for example, shorten the periods within which claims may be barred. It may, if it think proper, direct that the necessary implements of agriculture or the tools of the mechanic, or articles of necessity in household furniture, like wearing apparel, be not liable to execution on judgments.*"

And this language has been several times cited with approval. The plaintiff's counsel say truly, that it was a *dictum*. So, too, is the language in *Von Hoffman* v. *Quincey*, 4 Wall., 550, which is relied upon by them to destroy its force. The same idea would seem to have been in the mind of the court in *Gunn* v. *Barry*, 15 Wall., 610, where the decision is put upon the great disparity between a former exemption and the present one, apparently admitting the right of the State to make a less noticeable change in the *amount* exempted.

3. Again, take the illustration given by McLean, J., in *Bronson* v. *Kinzie*, *supra*. Suppose the State shall abolish its courts, or, rather, suppose that in 1868, it had created, as it did, new courts, and had

prescribed the jurisdiction of each, but had given to *none of them* jurisdiction over contracts, past or future, would the obligation of contracts be destroyed or impaired thereby? Can a State be compelled to give a remedy for the violation of a contract? It is true she must treat all alike. She cannot distinguish against any class. But what if she chose to furnish no machinery to any of them? Has she not the right? In other words, is not the remedy entirely within the purview of State legislaton? And is it not, therefore, clearly separable and distinguishable from the "obligation?"

4. There is no human subtlety which can distinguish between an exemption from execution *against the person* and an exemption from *execution against property*. Both are a part of the remedy. If the State has power to exempt certain articles because they are necessaries, the power to define what *are* necessaries, must be admitted.

THE REMEDY NO PART OF THE OBLIGATION.

While reason, humanity and the progress of enlightened thought, have compelled the court to admit that the remedy, so far as it concerned the debtor's person, was not a part of the obligation, it has, however, been held in many of the cases cited in the plaintiff's Brief, that the remedy cannot be affected except by the exemption of necessaries, &c., the change of the period of limitation and other minor particulars, without infringing the prohibition of the Constitution. There are certain decisions of the Supreme Courts of some of the States, however, which take the broad ground that the remedy is not within the obligation of a contract, to any extent, whatever, and is, consequently, within the absolute control of the State. This is done upon grounds, and with reason, worthy of grave consideration even aside from the character of the courts from which they emanate. The theory of these cases is, that the contract itself gives the creditor no right to, or affecting the property of the debtor, until it has ripened into a lien by judgment, or otherwise. According to these, it is inconsistent to hold that the State cannot exempt from execution, property which the debtor has an undoubted right to sell or encumber, up to the very hour of lien obtained by the creditor. The most important of these cases are:

Moore v. *Gould*, 1 Kernan, 11 N. Y. R., 281.

Jacobs v. *Smallwood*, 63 N. C. R., 112.

Hill v. *Kessler*, *Ib.*, 437.

Garrett v. *Cheshire*, 39 N. C. R., 396.

Wilson v. *Sparks*, 72 N. C. R., 288.
Edwards v. *Kearzey*, 75 N. C. R., 409.

STATE CONTROL OVER PRIVATE PROPERTY.

The effect of what is termed the homestead provision of the Constitution of North Carolina, is not to deny the creditor's right, but to regulate the manner in which it shall be enforced. It does not prevent him from holding his debtor liable, but simply says that a certain portion of the debtor's real estate shall not be subject to sale during his life, nor until the majority of his youngest child. It is not so much for the ease and comfort of the debtor, as for the benefit of the State—not to favor the debtor, but to prevent the evils of almost universal pauperism—that it was enacted. The State takes a certain amount of the debtor's realty, sets it apart, at an assigned value, and charges it with a public ~~trust~~, to-wit: the support of the family of a citizen during a certain period. The purpose of the provision is to prevent pauperism, ignorance and crime, by assuring the citizen of a sufficiency to prevent absolute want during his lifetime, not for his sake, nor to prevent his creditor from having his due, but because the public weal demanded that the scath of the years of revolution should not fall upon unprotected heads and the State be burdened with an unnumbered host of hopeless paupers, in consequence.

It affects the remedy of the creditor only incidentally, in the performance of a high public behest. The safety and health of the Commonwealth are above private right. The sacredness of private property disappears before the imperious demands of public necessity. When two rights are in conflict, the greater must prevail. See

Munn v. *Illinois*, 94 U. S. R., 113.

Chicago, Burlington & Quincy R. R. Co. v. *Iowa*, *Ib.*, 155.

Peik v. *Chicago & N. W. R. R. Co.*, *Ib.*, 164.

There can be no greater public necessity than the prevention of universal pauperism, nor can there be an instance which more clearly illustrates the necessity of so construing this provision than the one now before the court. The general facts have passed into history, of which the court must take judicial cognizance. After an exhausting war, a conquered people are left with a race of paupers equalling *one-third of the whole* population, to be supported; all their property except lands has disappeared before the seething breath of war; the "obligation" of the contracts by which slave property was held, had